

No. 89-1620

IN THE

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Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1990

INDEPENDENT INSURANCE AGENTS OF AMERICA, INC.,
NATIONAL ASSOCIATION OF CASUALTY AND SURETY AGENTS,
NATIONAL ASSOCIATION OF LIFE UNDERWRITERS,
NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE
AGENTS, NATIONAL ASSOCIATION OF SURETY BOND
PRODUCERS, NEW YORK ASSOCIATION OF LIFE
UNDERWRITERS, INDEPENDENT INSURANCE AGENTS
OF NEW YORK, INC. AND THE PROFESSIONAL
INSURANCE AGENTS OF NEW YORK, INC.,

Petitioners,

v.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,

Respondent,

MERCHANTS NATIONAL CORPORATION,

Intervenor.

On Petition For Writ Of Certiorari To The United
States Court Of Appeals For The Second Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF
REALTORS® AS *AMICUS CURIAE* IN SUPPORT
OF PETITION FOR WRIT OF CERTIORARI

LAURENE K. JANIK

Counsel of Record

430 North Michigan Avenue
Chicago, Illinois 60611
(312) 329-8371

Counsel for Amicus Curiae

NATIONAL ASSOCIATION OF REALTORS®



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* All parties of record in this case have consented to the filing of this brief *amicus curiae* in support of petitioners. These consents are filed herewith.



INTEREST OF THE *AMICUS CURIAE*

The NATIONAL ASSOCIATION OF REALTORS® (hereinafter "NAR") is the nation's largest trade association, comprised of over 800,000 persons engaged in all phases of the real estate business. Those members, who identify themselves by use of the federally registered collective membership mark "REALTOR®", all subscribe to NAR's strict Code of Ethics and Standards of Practice.

The decision of the Second Circuit has widespread impact on the real estate industry. While the instant case involves the ability of banks to engage in insurance activities, its holding is in no way limited to insurance. The decision will also permit the banking industry to participate in all aspects of the real estate business, provided it is permitted by the chartering authority.

NAR opposes participation in the real estate business by financial entities which benefit from federal deposit insurance, favorable tax treatment, and special access to credit. The basis for this opposition is the likelihood that participation in real estate activities may conflict with the interests of their customers, threaten the safety and financial stability of the institution, increase the risk of taxpayer liability and pose a threat to the competitive structure of the real estate industry.

A determination of the circumstances under which a bank will be permitted to engage in nonbank activities, such as real estate, is of direct and immediate concern to the NAR and its membership.

ARGUMENT

The issue in this case is whether the nonbanking limitations of Section 4 of the Bank Holding Company Act (the "Act"), 12 U.S.C. 1843, apply to direct activities of bank subsidiaries of bank holding companies. The court of appeals accepted as reasonable the interpretation of the Board of Governors of the Federal Reserve System that vests national and state chartering authorities with the power to decide the permissible scope of nonbank activities of bank subsidiaries.

The result of this decision is that state bank subsidiaries of bank holding companies are not prohibited from engaging in any type of nonbanking activity permitted by state law, including all aspects of the real estate business, notwithstanding the fact that bank holding companies have been expressly forbidden from engaging in such activities by Section 4 of the Act.

Such a result, which permits subsidiaries to do precisely that which has been expressly forbidden to the parent is incongruous, eviscerates the Act and frustrates its very purpose.

NAR believes that the Board's construction of the Act is not only inconsistent with the plain dictates of common sense, but also incorrect as a matter of law. In that regard, NAR endorses and urges to the Court the legal arguments so ably presented by petitioners in their brief.

NAR also recognizes a pressing need for clarification of this issue by the Supreme Court at this time. Not only has this controversy been the subject of protracted litigation, it has also been the subject of periodic considera-

tion by the United States Congress. Clarification by the Supreme Court of the present status of the law will permit further debate of the issue in the Congress without the cloud of uncertainty that presently exists as to the correct reading of Congressional intent and legislative history.

CONCLUSION

For the foregoing reasons, NAR urges the Court to grant the petition for writ of certiorari.

Respectfully submitted,

LAURENE K. JANIK

Counsel of Record

430 North Michigan Avenue

Chicago, Illinois 60611

(312) 329-8371

Counsel for Amicus Curiae

NATIONAL ASSOCIATION OF REALTORS®

July 25, 1990